

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHWESTERN DIVISION

JENNIFER HALL and JOSE ROCHA,	§	
individually and on behalf of all others	§	
similarly situated,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	C.A. No. 3:07-CV-00484-CLS
	§	
PHYLLIS THOMAS and GLORIA	§	
FISHER,	§	
	§	
Defendants.	§	

**DEFENDANTS’ SUR-REPLY IN SUPPORT OF THEIR RESPONSE TO  
PLAINTIFFS’ MOTION TO AMEND THE SCHEDULING ORDER**

Defendants Phyllis Thomas and Gloria Fisher (collectively, “Defendants”) file their Sur-Reply in Support of Their Response to Plaintiffs’ Motion to Amend the Scheduling Order (the “Sur-Reply”) and state as follows:

**I. ARGUMENTS AND AUTHORITIES**

While Plaintiffs claim that they are merely “narrowing the scope of discovery,” Plaintiffs’ Motion to Amend the Scheduling Order (the “Motion”) requests that putative class members nationwide be permitted to file separate, duplicative suits. However, to do so it would first be necessary to drop the claims of all putative class members for Gold Kist and Pilgrim’s Pride facilities outside of

Russellville, Alabama. For this reason, Plaintiffs must meet the burden of Rules 15 and 41—which they have not met—in order to obtain their requested relief.

First, Plaintiffs’ Second Amended Complaint was filed as a class action “on behalf of herself and all other persons *legally authorized to be employed in the U.S.* who have been employed at all Gold Kist and Pilgrim’s Pride Facilities nationwide, as hourly wage earners in the last four years.” Court’s Memorandum Opinion, Doc. 31, p. 1 (emphasis added). Plaintiffs allege that the individual Defendants “are part of a nationwide conspiracy.” *Id.* (emphasis added). Thus, although discovery in this case may be limited to the Russellville, Alabama facility, the claims of the putative class members at other facilities will remain a part of the Second Amended Complaint. Consequently, the putative class members could not pursue their claims in other venues, as Plaintiffs request.

Second, Plaintiffs represent in their Reply that Defendants argued Plaintiffs’ Motion should be dismissed under Federal Rule of Civil Procedure 23, and because a class has not been certified, Defendants’ argument is misplaced. *See* Plaintiffs’ Reply, pp. 1-2 (Docket No. 151-1). To the contrary, Defendants’ Response specifically states that Plaintiffs’ request is governed by Rules 15 and 41—neither of which are met or discussed by Plaintiffs in either their Motion or Reply.

Finally, the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the putative class until class

certification is denied. *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 354 (1983). Thus, Plaintiffs' stated purpose for the Motion of protecting statute of limitations issues for absent putative class members is misplaced.

## II. CONCLUSION

For the reasons set forth above, Defendants request that the Court deny Plaintiffs' Motion to Amend the Scheduling Order and for such other and further relief to which Defendants may be justly entitled at law or in equity.

Respectfully submitted,

/s/ Mark D. Taylor

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 27, 2010, I presented the foregoing *Defendants' Sur-Reply in Support of Their Response to Plaintiffs' Motion to Amend the Scheduling Order* to the Clerk of the Court for filing and uploading to the CM/ECF System which will send notification of such filing to the following:

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